

ARIZONA ATTORNEYS FOR CRIMINAL JUSTICE
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IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:) No. R-10-0012
)
) AACJ COMMENT RE: PETITION
Petition to Amend Rule 8.4(a)(4),) TO AMEND RULE 8.2(a)(4),
Arizona Rules of Criminal Procedure) ARIZONA RULES OF CRIMINAL
) PROCEDURE
)
)
)
)

¶1 Pursuant to Rule 28 of the Arizona Rules of Supreme Court, Arizona Attorneys for Criminal Justice (“AACJ”) hereby submits the following comment to the above-referenced petition. AACJ is a not-for-profit membership organization representing approximately four hundred criminal defense lawyers licensed to practice in the State of Arizona, as well as law students and other associated professionals, who are dedicated to protecting the rights of the accused in the courts and in the legislature.

¶2 AACJ supports the proposed rule change increasing the capital case Rule 8 time limit from 18 to 24 months.

¶3 As the Capital Case Commissions’ study has shown, the current time limit of 18 months has proven to be unworkable in practice. In addition, the current 18 month time limit results in the setting of premature “false” trial dates which inappropriately and falsely raise the expectations of victims and other parties to the litigation. We should not be telling victims that a capital case will be resolved in 18 months when experience and the practicalities of capital litigation inevitably make

1 that a false promise. It is the experience of this writer, having represented at least
2 nine capital defendants in Maricopa County over the past ten years, that many
3 victims in capital cases express as much frustration with the false expectations
4 arising from the current Rule 8 time limit as they do with the actual time involved
5 in getting a capital case to trial. Victims should be told the truth about the time
6 involved in capital litigation.

7 ¶4 The additional time necessary for defense counsel to adequately
8 prepare a case in which the State is seeking the irrevocable penalty of death is a
9 constitutionally mandated cost of capital punishment. The U.S. Supreme Court has
10 made it clear that a sentencing jury may not be precluded from considering “any
11 relevant, mitigating evidence.” *Buchanan v. Angelone*, 522 U.S. 269, 276 (1998)
12 (citing to *Penry v. Lynaugh*, *Eddings v. Oklahoma*, and *Lockett v. Ohio*). The
13 enforcement of arbitrary time limits in a case in which the defense has not had
14 adequate time to discover, and thus present, relevant mitigating evidence violates
15 this constitutional mandate and is likely to result in capital sentencing decisions by
16 less than fully informed juries as well as potentially expensive and even more time
17 consuming remands on appeal.

18 ¶5 For these reasons, AACJ supports the proposed rule change.

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20 DATED: May __, 2010.

21 ARIZONA ATTORNEYS FOR CRIMINAL JUSTICE
22

23 By /s/
24 John A. Canby

25 This comment e-filed this date with:
26

27 Supreme Court of Arizona
28 1501 West Jefferson
Phoenix, AZ 85007-3329

Copies of this Comment

Mailed this date to:

David Byers

Administrative Office of Court

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Mark Meltzer, Petitioner